

The 14th September, 1994

No. 14/13/87-6Lab./752.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Chairman/Addl. D.C., DRDA, Bhiwani *versus* Ashok Kumar.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 406 of 90

Date of receipt : 28-8-89

Date of decision : 4-10-94

SHRI ASHOK KUMAR, S/O MALA RAM, VPO BAMLA, DISTRICT BHIWANI

.. Applicant.

versus

1. CHAIRMAN/ADDL. DEPUTY COMMISSIONER, DISTRICT RURAL DEVELOPMENT AUTHORITY, BHIWANI

2. CHIEF EXECUTIVE OFFICER, D.R.D.A. BHIWANI .. Respondent-Management.

Present :

Shri Chetan Anand, for the workman.

Shri Ramphal, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Ashok Kumar and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Bwn/85-89/36713—19, dated 23rd August, 1989 :—

Whether termination of services of Ashok Kumar is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman, he was appointed as Driver under the management on 4th February, 1983 against a permanent post through Employment Exchange Bhiwani and when he reported for duty on 19th February, 1986, he was not allowed to do so and he was told that his services were no longer required. According to the workman, the action of the management was illegal, unjustified and violative of provisions of the Act. He, therefore, prayed for reinstatement with full back wages and other benefits.

3. The management, in its written statement, admitted that the workman was appointed as Driver on 4th February, 1983, but it was stated that he was appointed on temporary basis and his services were liable to be terminated without any notice. According to the management, the services of the workman were terminated in April, 1984 due to non-receipt of sanction of scheme for the year 1984-85 and thereafter he was appointed on 30th May, 1984 on daily wages in place of another driver to fill up the vacancy. According to the management, the workman was again appointed on 20th October, 1985 in the survey unit of CADA, Bhiwani and his services were terminated on 19th February, 1986 due to closing of the scheme. Several preliminary objections were also raised by the management, as they are reflected in the following issues framed on 15th June, 1990 by my learned predecessor :—

(1) As per reference.

(2) Whether the workman has no locus standi ?

- (3) Whether the reference is not maintainable in the present form ?
- (4) Whether the reference is barred by time ?
- (5) Whether the workman has concealed material facts and the claim statement is liable to be dismissed ?
- (6) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri Chetan Anand, A.R. of the workman and Shri Ramphal, A.R. of the management have gone through the case file. My findings on the above issues are as under :-

Issue No. 1:

5. The workman, who appeared as WW-1, has stated that he was appointed on 4th February, 1983 and that his services were terminated on 19th February, 1986 without giving him any notice, and without paying him any retrenchment compensation.

6. Ex. W-1 is the initial appointment letter issued by the management to Ashok Kumar and another copy of this appointment letter has been tendered by the management as Ex. M-1. Its perusal would show that Ashok Kumar was appointed as temporary driver for a period of six months. It is evident from Ex. M-2 that the services of workman were terminated on 5th April, 1985 due to non-receipt of sanction of the scheme for the year 1984-85. He was, thereafter, appointed in place of Amir Singh, driver, who absented from duty and this appointment was till the joining of Amir Singh, driver. Ashok Kumar was again appointed on 20th December, 1985 in the CADA unit and it is evident from Ex. M-5 that services of Ashok Kumar were terminated due to completion of soil survey work. Shri Chetan Anand, A.R. of the workman contended that since the workman had put in more than 240 days service in 12 months, it amounted to "unfair labour practice when his services were terminated and that the present case was covered under Section 25-F of the Act. He placed reliance in this connection on the observations made by Punjab & Haryana High Court in the authority of HARYANA STATE FEDERATION OF CONSUMERS COOP. HOOLESALE STORES LTD. *versus* PRESIDING OFFICER, LABOUR COURT, CHANDIGARH, 1992(1) SERVICE CASES TODAY-697 and the observations made in the latest authority of THE KURUKSHETRA CENTRAL COOP. BANK LTD. *Versus* STATE OF HARYANA & OTHERS, 1993(1)RSJ-763.

7. The contention of the management, on the other hand is that it is not a case of "retrenchment" as services of the workman were hired for specific period and services were terminated in accordance with the stipulation contained in the appointment letter in that behalf. Reliance has been placed on Section 2(oo)(bb) of the Act as also on the judgment of Gujrat High Court in the case of J.J. SHRIMALI *versus* DISTRICT DEVELOPMENT OFFICER, JILLA PANCHAYAT & OTHERS, 1989 LAB. I. C.-689.

8. Although it is true that the provisions of Sub-Clause (bb) of clause (oo) of Section 2 of the Act, are to be construed strictly, it being an exception, so as not to drastically restrict the orbit of the terms of "retrenchment", but in our case, as is evident from the first appointment letter Ex. M-1, the workman was appointed for a specific period and, *vide* second appointment letter Ex. M-3, he was appointed against the vacancy caused by the absence of Amir Singh, Driver. The first termination which took place on 5th April, 1984 was due to non receipt of sanction for the year 1984-85 and the second termination was obviously on arrival of Amir Singh, Driver, who earlier absented from duty. The third termination, which took place on 19th February, 1986, as is evident from Ex. M-5, again took place due to completion of soil survey work. There is no material on the file that the work of soil survey unit had not been accomplished so far. As the appointment of the workman was co-extensive with the duration of soil survey work under the CADA Scheme, his services came to an end on the completion of soil survey work. I am, therefore, of the opinion that the case of the workman clearly fell within second part of clause (bb) of Section 2(oo) of the Act and therefore, the provisions of Section 25-F of the Act, will not be attracted in this case.

9. In the light of discussion above, I hold that termination of services of the workman was justified and he is not entitled to any relief. The issue is answered accordingly.

Issues No. 2, 3, 4 and 5.

10. All these issues were not pressed by the A.R. of the management and were conceded to by him during arguments. All these issues are, therefore, answered against the management.

Issue No. 6 Relief :

11. In view of my findings on the above issues, the termination of services of the petitioner is held justified and in order and he is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 4th October, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 2218, dated the 6th October, 1994.

At copy, with spare copy, is forwarded, to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour
Court, Hisar.

No. 14/13/87-6Lb./753.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s B-in-Chief, Irrigation Department, Haryana, Chandigarh *versus* Har Kishan

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 125 of 90

Date of receipt .. 14-9-89

Date of decision .. 4-10-94

SHRI HAR KISHAN, S/O SARUPA RAM, VILLAGE RITHAL, TEHSIL GOHANA, DISTRICT SONEPAT .. Applicant.

versus

1. ENGINEER-IN-CHIEF, IRRIGATION DEPARTMENT, HARYANA, CHANDIGARH.
2. EXECUTIVE ENGINEER, LOHARU LIFT IRRIGATION DIVISION, NEAR RAILWAY STATION, CH. DADRI (BHIWANI) .. Respondent/management.

Presents :

Shri T.C. Gupta, for the workman.

Shri Sita Ram, ADA, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') the Governor of Haryana referred the following dispute between Harkishan and the above mentioned management for adjudication to this Court,—vide Labour Department letter No. Bwn/196-89/39309—15, dated the 12th September, 1989 :—

Whether termination of services of Harkishan is justified and in order? If not, to what relief is he entitled?

2. According to the workman, he was working with the management since 15th August, 1988 as Beldar on daily wages and his services were terminated on 8th June, 1989 in an illegal manner, without

any reason. He alleged that termination of his services was in violation of Sections 25-F, 25-G and 25-H of the Act. He prayed for reinstatement with full back wages and other benefits.

3. The management, in its written statement, pleaded that the petitioner was engaged on 1st September 1988 on daily wages and he himself absconded from the job. The details of working days of the petitioner were attached as annexure-A with the written statement.

4. On the pleadings of the parties, the following issues were framed on 13th March, 1992 by my learned predecessor :-

(1) As per terms of reference.

(2) Whether the workman himself absconded from the job as alleged? If so, to what effect?

(3) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri T.C. Gupta, A.R. of the workman and Shri Sita Ram ADA on behalf of the management and have gone through the case file. My findings on the above issues are as under :-

Issue No. 1 ;

6. Harkishan, workman appeared as WW-1 and he has stated that he was appointed as Beldar on 15th August, 1988 and that his services were terminated on 6th June, 1989, without giving him any notice and without paying him any retrenchment compensation. Shri Ram Narain, clerk was examined as AWW-1, who stated on oath that the petitioner had received wages for full month during the months from September, 1988 to January, 1989.

7. Shri Hem Raj, SDO was examined as MW-1, and he stated that the petitioner had worked as Beldar and he left the job himself on 31st May, 1989. He adduced in evidence the details of working days of the petitioner, as Ex.M-1.

8. According to Ex.M-1, the petitioner had worked for 113 days from 1st September, 1988 to 31st December, 1988 and then for 123 days from 1st January, 1989 to 31st May, 1989, making a total of 236 days.

9. It now stands established that the petitioner had worked for 236 days as detailed in Ex.M-1. It is not the case of the management that the work had ceased in June, 1989. Keeping in view this fact, when the job was available, I am of the view that action of the management in preventing the workman from attending to his duties with effect from 1st June, 1989 was an "unfair labour practice", and on this account, the retrenchment of the workman is illegal. In this connection, I place reliance on the Division Bench authority of *Kapurthala Central Coop. Bank Ltd., Kapurthala versus Presiding Officer Labour Court, Jalandhar and others*, 1934 Lab.L.C. 974 and subsequent authorities of *Ferozepur Central Cooperative Bank Ltd. versus Labour Court Bhatinda*, FJR(Vol-67)-367 and *Gurdaspur Central Cooperative Bank Limited versus Labour Court, Gurdaspur and others* 1931(1)RSJ-76. In the authority of *Kapurthala Central Cooperative Bank Limited versus Labour Court Jalandhar (Supra)* the workman has completed 230 days job, while in the authority of *Ferozepur Central Cooperative Bank Limited versus Labour Court, Bhatinda (Supra)*, the workman had put in 232 days in service. On the strength of these two authorities, it can be said without any hesitation, that the termination of services of the workman, amounted to "unfair labour practice", and the same was illegal. The workman is, thus entitled to reinstatement with consequential benefits.

10. In view of the above discussion, the termination of services of the workman is held illegal and he is entitled to reinstatement with full back wages and other consequential benefits. The issue is answered accordingly, in favour of the workman.

Issue No. 2 :

11. Although Hem Raj, SDO, MW-1 has deposed that the workman left the job himself, but this bald statement of Hem Raj, SDO is not supported by any evidence or circumstances on the file. It is to be noted that the workman raised the demand notice on 26th June, 1989 i.e. within 20 days of his alleged termination and it, therefore, cannot be accepted that the workman himself abandoned the job, as alleged. The issue is, therefore, answered against the management.

Issue No. 3.—Relief.

12. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set aside. The petitioner is reinstated in the same post forth with, with

full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 4th October, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 2220 dated the 6th October, 1994.

A copy, with spare copy, is forwarded, to Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6Lab./755.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of T.C., Haryana, Chandigarh *versus* Ramesh Chander.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 76/90

between

1. THE MANAGEMENT OF TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.
2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD.

versus

THE WORKMAN—NAMESLY SHRI RAMESH CHANDER, S/O SH. KANI RAM, C/O SHRI BHIM SINGH YADAV, 65-A, CHAWALA COLONY, BALLABGARH (FARIDABAD).

Present :

Shri B. S. Yadav AR, for the workman.

Shri R. P. Dagar, ADA, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, —*vide* Haryana Government Endorsement No. 6724—31 dated the 16th February 1990:—

Whether the termination of services of Shri Ramesh Chander is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was engaged by the respondent No.2 as helper with effect from 1st June, 1985 on daily wages. His work was of permanent nature and he had been performing the duties of a permanent regular helper. He therefore, demanded the wages equal to that of a permanent helper. The respondent did not relish his request and terminated his services on 31st March, 1986 without assigning any reason or issuing charge-sheet or holding enquiry and without affording any opportunity of hearing. He was also not paid retrenchment benefits as per provision of section 25-F of the Act. The action of the respondent No. 2 terminating his services is thus, illegal and unjustified and he is entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No.2 submitted written statement dated 17th September, 1990 stating therein that the workman was appointed on *ad hoc* basis on daily wages owing to transfer of certain officials. The work assigned to him was of temporary in nature. His allegation that he had demanded wages equal

to the wages of a permanent helper was denied. It was further averred that the services of the workman were discontinued on 16th January, 1986 and not on 31st March, 1986 and the order was passed according to the condition of appointment and not by way of punishment. The case is covered under the provision of section 2(oo)(bb) of the Act and as such the workman is not entitled to retrenchment benefit under section 25-F of the Act specially when he had not even rendered service for continuous period of 240 days prior to the date of termination of his services. Consequently, he is not entitled to the relief claimed by him.

4. The workman submitted replication dated 14th August, 1991 re-asserting the previous averments and denying the averments of the respondent No. 2.

5. On the pleading of the parties, the following issue was framed :—

(1) Whether the termination of services of Shri Ramesh Chander is legal and justified ? If not, to what relief, is he entitled to ? (As per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as under :—

Issue No. 1 :

8. The respondents have examined only one witness namely MW-1 Hemraj, clerk and he deposed that the service record of the workman was not available in the office as the same had been burnt at the time of transfer of office from one building to the other. He however, stated that the workman had worked up to 16th January, 1986 and that he had rendered service for a period of less than 240 days prior to the termination of his service. In cross examination this witness admitted that he was posted as record keeper on 14th June, 1993 and as such he did not know as to whether the workman had worked up to 31st March, 1986.

9. On the other hand, the workman deposed that he had been working as helper with effect from 1st June, 1985 to 31st March, 1986 and his services were terminated without any reason and without issuing charge-sheet etc.

10. The statement given by MW-1 Hemraj, clerk cannot be accepted to the effect that the workman had worked up to 16th January, 1986 and not up to 31st March, 1986. Firstly because he did not produce any record and secondly because of his admission in cross examination that he did not know as to whether the workman had worked up to 31st March, 1986. The workman himself categorically stated on oath that he had worked up to 31st March, 1986. He fully explained in his cross examination that he had worked at Bus Stand Dushera Ground, Faridabad during the period from 16th January, 1986 to 31st March, 1986 under the verbal orders of Parhlad Singh General Manager and Haridev Sharma, Works Manager. Keeping in view this position, it is held that it stands proved that the workman had served under respondent No. 2 with effect from 1st June, 1985 to 31st March, 1986 for a period of more than 240 days prior to the date of termination of his services. Admittedly he was not paid retrenchment compensation envisaged under section 25-F of the Act. There is nothing on record to show that the services of the workman were terminated as per terms and conditions of his appointment and so the case is not covered under section 2(oo)(bb) of the Act. The termination of service of the workman by the respondent is thus, illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service. The workman is however, not entitled to full back wages as he served demand notice dated 25th August, 1989 after the expiry of long period of more than 3 years. He may be given 50% of the wages with effect from 26th August, 1989 up to the date.

The award is passed accordingly.

U. B. KHANDUJA,

The 7th October, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2998, dated the 10th October, 1994.

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Departments Chandigarh.

U. B. KHANDJUA,

Presiding Officer,
Labour Court-II,
Faridabad.